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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/617,318	07/17/2000	David N Roundhill	500789.01	9061

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INTELLECTUAL PROPERTY DEPARTMENT
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EXAMINER

RAMIREZ, JOHN FERNANDO

ART UNIT	PAPER NUMBER
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3777

MAIL DATE	DELIVERY MODE
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10/28/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 09/617,318	Applicant(s) ROUNDHILL ET AL.	
	Examiner John Ramirez	Art Unit 3737	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 September 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 28-58, 71-84, 86-93 and 95-107 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 28-58, 71-84, 86-93 and 95-102 is/are allowed.
- 6) ☒ Claim(s) 103-107 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Applicants' Letter

1. The Office sent a letter on August 13, 2010 setting a one month period for response inviting applicant to file a response in compliance with 37 CFR § 41.202(a). Applicants filed a response on September 13, 2010 providing arguments as to why a response under 41.202(a) was not necessary. Applicants' response is noted, but the arguments are not found persuasive for reasons stated below.
2. Applicants are advised that the Notice of Allowance mailed is vacated. If the issue fee has already been paid, applicants may request a refund or request that the fee be credited to a deposit account. However, applicants may wait until the application is either found allowable or held abandoned. If allowed, upon receipt of a new Notice of Allowance, applicants may request that the previously submitted issue fee be applied. If abandoned, applicants may request refund or credit to a specified Deposit Account.
3. The indicated allowability of claims 103-107 is withdrawn in view of the newly applied grounds of rejection. Rejections based on the new grounds follow.

Powers of Attorney / Assignee Information

4. The three named inventors granted a power of attorney to Yorks and McKinnon in an oath signed on February 2, 1999, and which was filed in the parent application (09/247,343) and in this application on July 17, 2000.
5. An unsigned revocation and substitute power of attorney was filed on July 17, 2000 on behalf of ALT Ultrasound. The record is unclear as to why the filing receipt shows a mailing address for Edward Bulchis at Dorsey & Whitney since there is no

Art Unit: 3737

record that the assignee filed the proper statement under 37 CFR 3.73(b) and the revocation found in the file was unsigned.

6. On May 30, 2002, Customer # 27076 was established for this application.

7. On March 5, 2007, a revocation and substitute power of attorney was filed along with a statement under 37 CFR 3.73(b). Applicants relied on a copy of an assignment, which was attached to the statement, and which was signed by inventors Roundhill, Averikiou and Powers on February 2, 1999. However, this assignment is for an invention entitled, "Ultrasonic Diagnostic Imaging with Blended Tissue Harmonic Signals" and expressly states it is for USP 6,283,919. Therefore, it appears that the revocation and substitute power of attorney filed on March 5, 2007 was defective.

8. There appear to have been other changes of address filed for Customer #27076 subsequent to March 5, 2007. ***However, the application record, as a whole, does not show the assignee filed the proper statements according it the right to take action in this application.***

Interference

9. The following is a brief summary of matters pertaining to applicants' multiple requests for an interference with other parties:

July 17, 2000	Application filed w/ request for interference filed under 1.607 vs. Hossak et al. (USP 5,928,151) for Claims 102-106
Mar 05, 2007	Applicants request interference under 41.202(a) vs. US application 10/920,661 and vs. USP 7,004,905
Jun 11, 2007	Applicants file "Request for Withdrawal of Interferences" vs US application 10/920,661 and vs. USP 7,004,905
Sep 08, 2009	Notice of Allowability mailed

Dec 08, 2009	Issue fee payment
Feb 24, 2010	Application withdrawn from issue for consideration of potential interference
Apr 29, 2010	Applicants notified in interview of copied claims remaining in application (Claims 103-107)
Aug 13, 2010	Applicants invited to submit statement in compliance with 37 CFR §41.202
Sep 13, 2010	Applicants argue that July 17, 2000 filing is acceptable

10. Applicants filed an amendment on July 17, 2000 that deleted Claims 1-27 and added "new claims 28-106." The request for interference vs. Hossack et al. stated the proposed interfering claims were 102-106.

11. On June 5, 2001, applicants were notified that the amendment failed to comply with 37 CFR §1.126 because applicants had numbered two claims as "70." The examiner renumbered the pending claims as 28-107.

12. Therefore, applicants' filing on July 17, 2000 was defective because it requested an interference for Claims 102-106, not 103-107.

13. While not a formal defect, applicants' July 17, 2000 request also contained five proposed counts, which appear to mirror applicants five copied claims. Applicants are reminded that interference counts are for "separate patentable inventions." Applicants may wish to consider suggesting a single count for purposes of an interference, since it is not clear that applicants have five separate patentable inventions.

14. Applicants are requesting an interference with USP 5,928,151, which has a constructive reduction to practice date of August 22, 1997. Based upon applicants'

Art Unit: 3737

claim for benefit, it appears applicants are relying on the filing date of November 26, 1996 of the provisional application 60/032,771 to establish their priority of invention. Therefore, Claims 103-107 have been reviewed to determine if they have 112, 1st paragraph support back to the '771 provisional application's disclosure.

15. The request for interference filed July 17, 2000 is acknowledged. However, examination of this application has not been completed as required by 37 CFR 41.102(a). Consideration of a potential interference is premature. See MPEP § 2303.

Election/Restrictions

16. On February 24, 2009, the Office made a restriction requirement, which applicants traversed in their response dated March 30, 2009. The Office withdrew the restriction requirement in the Notice of Allowability mailed September 8, 2009. However, all of this transpired without either the examiner or applicants addressing the question of the outstanding interference request vs. Hossack et al. The applicants are advised that due to a potential interference, any claims that might be non-interfering can be restricted under 35 U.S.C. 121. According to MPEP 2303, "An applicant may, of course, also choose to cancel claims and refile them in a continuation application without waiting for the restriction requirement."

17. No restriction requirement is being made at this time pending receipt of applicants' suggested count(s) under 37 CFR § 41.202, however, applicants may wish to cancel and refile any claims they believe are not part of an interference proceeding.

Claim Status

18. A brief summary of claim status is as follows:

Art Unit: 3737

Jul 17, 2000	Divisional application filed with Claims 1-27 canceled and new Claims 28-107
Jul 03, 2001	Applicants' response to restriction requirement canceled Claims 59-70
May 21, 2002	Action misstates Claims 59-70 status as withdrawn (not canceled)
Aug 22, 2002	Applicants misstate Claims 28-107 are pending
Mar 05, 2007	Claims 108-157 added for purposes of interference
Jun 11, 2007	Claims 59-70, 85, 94 and Claims 108-157 stated as canceled

19. For purposes of this Office action, Claims 28-58, 71-84, 86-93, 95-107, as filed on March 30, 2009, are considered to be pending.

Priority

20. This application was filed as a divisional of 09/247,343 (see transmittal letter and preliminary amendment filed July 17, 2000).

21. On October 17, 2001, the Office requested clarification of any priority claim to 08/723,483 because the specification, as amended, did not refer to this application for the benefit of claiming priority.

22. Applicants responded on January 14, 2002 (the paper had a certificate of mailing of November 19, 2001) with a statement that "At this time, Applicant is electing not to amend this application to refer to all of the applications in the chain of co-pendency and to file reissue applications for the purpose of claiming priority. Thus, for the present, applicant is not claiming priority to the '483 application or the provisional application, although applicant may subsequently do so."

23. On March 5, 2007, applicants filed a supplemental amendment requesting the first paragraph of the specification be amended. This amendment included a statement that the priority being claimed was to 08/723,483, along with other priority claims already of record. Applicant did not add a statement for benefit of priority to provisional application 60/018,095, which had been discussed in the January 14, 2002 paper.

24. It does not appear that the change in priority claim made on March 5, 2007 has been addressed on the record. However, because this application has a filing date of July 17, 2000, which is prior to November 29, 2000, it does not appear the time periods set in 37 CFR §1.78 apply to this application.

25. However, applicants' proposed amendment to the specification, filed on March 5, 2007, cannot be accepted. Applicants' state that 08/723,483 claims benefit to US Provisional application 60/032,771. The '483 application cannot claim benefit of a provisional application which has a later filing date (September 1996 vs. November 1996). Therefore, the Office's records have not been updated to reflect this amendment.

26. Applicants filed two separate requests for interference on March 5, 2007, each of which addressed why applicants would prevail on priority under 37 CFR §41.202(a)(4). Both of these statements appear to contain the same defect of claiming the benefit of priority to September 1996 while stating that 08/723,483 claims benefit to a provisional application filed November 26, 1996. This is a defective statement of priority, which has not been accepted for its proposed showing.

Art Unit: 3737

27. Applicants' statement filed March 5, 2007 under § 41.202 vs. application 10/920,661 is also defective because it states the paper is being filed in an "application filed concurrently herewith is a continuation of pending United States Patent Application No. 09/617,318..." Since this application is 09/617,318, applicants are requested to clarify whether this paper was intended for another application, and if so, the application number for which this paper was intended to be filed.

28. For purposes of this action, applicants' claim for benefit is considered to be through 09/247,343 (filing date Feb 8, 1999), which is a divisional of 08/943,546 (filing date Oct 3, 1997), which claims priority to provisional application 60/032,771 (filing date of Nov 26, 1996). This is derived from the language contained in the July 17, 2000 preliminary amendment and the fact that the specification, as filed, was from 09/247,343.

Divisional vs. Continuation-in-Part Benefit

29. This application was filed as a divisional of 09/247,343 (see transmittal letter and preliminary amendment filed July 17, 2000).

30. Applicant's claim for the benefit of a prior-filed application under 35 U.S.C. 119(e) or under 35 U.S.C. 120, 121, or 365(c) is acknowledged. Applicant has not complied with one or more conditions for receiving the benefit of an earlier filing date under 35 U.S.C. 121 as follows:

The later-filed application must be an application for a patent for an invention which is also disclosed in the prior application (the parent or original nonprovisional application or provisional application). The disclosure of the invention in the parent

Art Unit: 3737

application and in the later-filed application must be sufficient to comply with the requirements of the first paragraph of 35 U.S.C. 112. See *Transco Products, Inc. v. Performance Contracting, Inc.*, 38 F.3d 551, 32 USPQ2d 1077 (Fed. Cir. 1994).

31. The disclosure of the prior-filed application, Application No. 09/247,343, fails to provide adequate support or enablement in the manner provided by the first paragraph of 35 U.S.C. 112 for one or more claims of this application.

32. This application is a copy of the specification from prior Application No. 09/247,343, filed February 8, 1999, and adds additional disclosure (Claims 103-107) not presented in the prior application. Since this application names an inventor or inventors named in the prior application, it appears to constitute a continuation-in-part of the prior application.

33. Claims 103-107, added on July 17, 2000, contain subject matter which was not described in the prior specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the previous applications were filed, had possession of the claimed invention. For example --

- Regarding Claims 103-107, it does not appear that the parent's specification (09/247,343) supports the claim limitation of the "subject being free of added ultrasound contrast agent **throughout the entire imaging session.**" In applicants' discussion for Count 1, filed on July 17, 2000, this statement is made:

Generating harmonic ultrasound images without the use of a contrast agent, which is known as tissue imaging, is described on page 1, line 33 through page 2, line 7 and on page 6, line 33 through page 7, line 12, among other places.

Art Unit: 3737

However, page 1 is describing what old and known properties are; and page 6 describes signal response without mentioning whether contrast agent is or isn't used. This is not the same as expressly stating applicants had possession of either a method or apparatus to be used solely in the absence of contrast agent

throughout the entire imaging session. In fact, applicants disclose a contrast signal detector (128 – see Figure 1) on page 9, line 34. If no contrast is used, then why is a contrast signal detector needed? As this language is from the parent application, it does not appear the claimed invention has support in the parent application's disclosure.

- Regarding Claims 103, 105-107, it does not appear the parent application's disclosure supports a second frequency band comprising anything beyond the harmonic band. Therefore, the language "at least a harmonic band" is newly added in this application.
- Regarding Claim 105, it does not appear the parent application's disclosure supports the concept that the Doppler image can be selected from either variance or combinations from the claimed grouping. Applicants' did disclose on page 9 of the copied specification that "power" is one option, so the examiner has interpreted "power" as being equivalent to "energy" and applicants have expressly stated velocity can be used. However, the other two choices from Claim 105 were not disclosed in the parent application's disclosure.

34. Accordingly, Claims 103-107 are not entitled to the benefit of the prior application's filing date.

Provisional Application – 60/032,771

35. The provisional application from which this application claims benefit was filed November 26, 1996, and has the title, "Ultrasonic Diagnostic Imaging of Response Frequency Differing from Transmit Frequency."

36. A review of the provisional application shows the following contents:

- Provisional application cover letter
- Express Mail certificate
- Specification (4 pages)
- One (1) sheet of drawings – labeled "Figure 4"

37. The current application, 09/617,318, discloses Figure 1 and discusses on page 9, "harmonic echo signals from the tissue are detected and processed by either a B mode processor **37** or a contrast signal detector **128** for display as a two dimensional ultrasonic image on the display **50**." Later, on page 9, bottom, to page 10 top, it is stated, "The signals from the contrast signal detector **128**, the processors **37** and **130**, and the three dimensional image signals are coupled to a video processor **140** where they may be selected fro two or three dimensional display on an image display **50** as dictated by user selection." Figure 1 of the current application is identical to the one figure submitted with the provisional application ("Figure 4").

38. While the figure in the provisional application shows these elements, there is no accompanying text to explain either a method or apparatus for producing or generating a three dimensional reconstruction as being claimed in Claims 103-107. The only relevant discussion appears on page 2, lines 23-27, which state, "The harmonic echo

Art Unit: 3737

signals from the tissue are detected and processed by either the B mode processor **37** or the contrast signal detector **128** and displayed by means of the video processor **140** as an ultrasonic image on the display **50**." There is no equivalent discussion in the provisional as to how 3D reconstruction occurs.

39. It is also noted that Figure 4 submitted with Provisional 60/032,771 is described as coming from another provisional application 60/026,813, which, in applicants' own words, was for "***an ultrasonic diagnostic imaging system for imaging with harmonic contrast agents.***"

40. Because provisional application '771 relies on a figure from a device using contrast agents, and does not discuss how/when 3D imaging is done, it does not appear that provisional '771 has 112 ^{1st} paragraph support for a system for 3D reconstruction during an imaging session where the subject is free of added ultrasound contrast agent throughout the entire imaging session. Therefore, for the purpose of this Office action, Claims 103-107 are deemed to lack 112 support in the provisional application.

Reissue Corrections

41. The papers filed on March 5, 2007 state in a footnote that a reissue of USP 6,283,919 (09/247,343) had been filed to correct the omission of the proper priority claim to USP 5,833,613 (08/723,483).

42. It does not appear that this application can claim priority to 08/723,483 until the reissue application (11/713,118) has been examined and the patent corrected.

Inventorship

43. A table is provided to compare the inventorship among the related applications:

09/617,318	Roundhill	Averkiou	Powers			
09/247,343	Roundhill	Averkiou	Powers			
08/943,546	Roundhill	Averkiou	Powers	Burns	Hwang	Wiggins
60/032,771		Averkiou	Powers		Hwang	Bruce

44. Applicants have at least one commonly named inventor among the applications. However, applicants are reminded that later-filed applications must also disclose the named inventor's invention claimed in at least one claim of the later-filed application in the manner provided by the first paragraph of 35 U.S.C. 112. (See 35 U.S.C. 120)

45. According to MPEP 201.06, the "divisional application should set forth the portion of the earlier disclosure that is germane to the invention as claimed in the divisional application."

Specification Objections

46. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required:

- Regarding Claims 103-107, it does not appear that the disclosure supports the claim limitation of the "subject being free of added ultrasound contrast agent ***throughout***

the entire imaging session.” In applicants’ discussion for Count 1, filed on July 17, 2000, this statement is made:

Generating harmonic ultrasound images without the use of a contrast agent, which is known as tissue imaging, is described on page 1, line 33 through page 2, line 7 and on page 6, line 33 through page 7, line 12, among other places.

However, page 1 is describing what old and known properties are; and page 6 describes signal response without mentioning whether contrast agent is or isn’t used. This is not the same as expressly stating applicants had possession of either a method or apparatus to be used solely in the absence of contrast agent

throughout the entire imaging session. In fact, applicants disclose a contrast signal detector (128 – see Figure 1) on page 9, line 34. If no contrast is used, then why is a contrast signal detector needed?

- Regarding Claims 103, 105-107, it does not appear the disclosure supports a second frequency band comprising anything beyond the harmonic band. Therefore, the language “at least a harmonic band” lacks antecedent basis in the disclosure, other than the claims.
- Regarding Claim 105, it does not appear the specification supports the concept that the Doppler image can be selected from either variance or combinations of the claimed group. Applicants’ specification, page 9, states “power” is one option, so the examiner has interpreted “power” as being equivalent to “energy” and applicants have expressly stated velocity can be used. However, the other choices are not supported by the specification, and lack antecedent basis.

Claim Rejections - 35 USC § 112

47. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

48. For purposes of this Office action, applicants' statements made under 37 CFR §1.607 in the paper filed July 17, 2000 have been considered.

49. Claims 103, 105-107 are rejected for failing to claim a feature which is taught as critical in the specification. As such these claims are rejected under the enablement provision section of 35 U.S.C. 112 (see MPEP 2164.08(c)). On page 12 of the specification, applicants have stated that "only" the harmonic return signals are used to produce the ultrasonic image. However, Claims 103, 105, 106, 107 all state the second frequency band comprises "at least a harmonic band" which implies the second plurality of signals are comprised of more than just the harmonic return signals as described in applicants' disclosure.

50. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

51. Claims 103, 105-107 recites the limitation "said imaging session" in part (a) of the claims. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

52. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

Art Unit: 3737

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

(f) he did not himself invent the subject matter sought to be patented.

53. Claims 103-107, as best understood, are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Hossack et al. (USP 5,928,151). Because the invention's limitations found in these claims are not found in applicants' prior disclosures (including the Provisional Application – 60/032,771), then Hossack et al. remains as a prior art reference against applicants date of July 17, 2000.

54. Claims 103-107 are rejected under 35 U.S.C. 102(f) because the applicant did not invent the claimed subject matter. Applicants copied these claims from Hossack et al., but did not possess the claimed invention as discussed above.

Allowable Subject Matter

55. Claims 28-58, 71-84, 86-93 and 95-102 are allowed.

56. The following is a statement of reasons for the indication of allowable subject matter: these claims do not appear to contain new matter relating to the exclusion of using a contrast agent.

57. As allowable subject matter has been indicated, applicant's reply must either comply with all formal requirements or specifically traverse each requirement not complied with. See 37 CFR 1.111(b) and MPEP § 707.07(a).

58.

Conclusion

Art Unit: 3737

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John F. Ramirez whose telephone number is 571-272-8685. The examiner can normally be reached on M-F 7:00-3:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chen Robert can be reached on 571-272-3672. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/J. F. R./
Examiner, Art Unit 3777

/Tse Chen/
Supervisory Patent Examiner, Art Unit 3777